

27 April 1971

JMM:

Attached for your signature to OMB is our so-called "second spouse" legislative package.

On 25 February Colonel White gave us the go-ahead to draw up the legislative package and send it to OMB for clearance.

The OMB package was assembled and sent out to OGC and Personnel for their review on 4 March. On 22 April we got the go-ahead from Personnel.

The possible advantage of delaying the submission of the package to OMB pending resolution of the transfer of employer contribution problem is now gone. The Commission has disagreed with our interpretation and the matter is now going to be formally referred to GAO for a decision and the submission of our legislative package at this time should not influence the outcome.

The only remaining question is whether Col. White should be brought up to date on an addition to the legislation. I talked to Harry Fisher and he doesn't think it is all that important and I tend to agree. The new item permits retirement credit upon reemployment for a participant separated from the Agency and receiving Federal benefits for work injuries (FECA). The precedent is the same as the other so-called "second spouse" benefits (P. L. 91-658).


LLM

(sent to OMB 29/4)

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

29 APR 1971

Mr. Wilfred H. Rommel
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Rommel:

This submits proposed legislation in accordance with Bureau of the Budget Circular No. A-19, revised. Enclosed are four copies of a draft bill, "To amend the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, and for other purposes." Also enclosed are copies of a sectional analysis, a comparison with existing law, and a draft of the letter of transmittal to the President of the Senate and the Speaker of the House of Representatives.

The proposed legislation would bring the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, into conformity with changes made by P. L. 91-658 in the Civil Service retirement system as follows:

- a. Widowers of deceased female participants are accorded the same treatment as widows of deceased male participants. (Sections 1 and 4)
- b. Surviving spouse protection is extended to cover certain marriages following retirement. (Sections 2 and 3)
- c. Retirement credit is authorized for periods of separation covered by Federal employees' compensation for work injuries. (Section 5)
- d. Section 6 provides effective dates in phase with those established for the Civil Service retirement system for the above changes.

The provisions of the Civil Service retirement system changed by P. L. 91-658 form the basis for comparable provisions in the CIA

Retirement Act. The change in fundamental concept reflected in the new law applies with equal validity to the CIA retirement system. Failure to keep pace would result in inequities in survivorship cases and would tend to undermine the effectiveness of the CIA Retirement Act.

Advice is requested as to whether there is any objection to the submission of the proposed legislation to the Congress from the standpoint of the Administration's program.

Sincerely,

25X1A

John M. Maury
Legislative Counsel

Enclosures

Distribution:

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A BILL

To amend the Central Intelligence Agency Retirement Act of 1964 for
Certain Employees, as amended, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of
2 the United States of America in Congress assembled, That --

3 Section 1. Section 204 of the Central Intelligence Agency Retirement
4 Act of 1964 for Certain Employees, as amended, (78 Stat. 1043;
5 50 U.S.C. 403 note) is amended --

6 (a) by striking "dependent" in subsection (a);

7 (b) by striking "Dependent widowers" and inserting "Widower"
8 in lieu thereof in subsection (b) (2); and

9 (c) by inserting ". " before the ", " and striking the remainder of
10 the sentence in subsection (b) (2).

11 Section 2. Section 221(b) of the Central Intelligence Agency
12 Retirement Act (50 U.S.C. 403 note) is amended to read as follows:

13 "(b)(1) If a participant who is married at the time of retirement
14 dies the surviving spouse to whom the participant was married at the
15 time of retirement, or the widow or widower to whom the participant
16 was married after retirement, is entitled to an annuity equal to 55
17 percent of the amount of the participant's annuity computed as pre-
18 scribed in paragraph (a) of this section, up to the full amount of such

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1 annuity specified by the participant as the base for such survivor
2 benefits at the time of retirement. The annuity of the participant
3 shall be reduced by 2 1/2 per centum of any amount up to \$3600
4 specified as the base for such survivor benefit by the participant
5 plus 10 per centum of any amount over \$3600 so specified.

6 "(2) If an annuitant dies after having elected a reduced annuity
7 provided in paragraph (2) of section 221(f) the surviving widow or
8 widower is entitled to an annuity computed as prescribed in paragraph
9 (1) of this subsection.

10 "(3) A spouse acquired after retirement is entitled to a survivor
11 annuity under this subsection only upon electing this annuity instead
12 of any other survivor benefit to which he may be entitled under this
13 or another retirement system for Government employees. The annuity
14 of the surviving spouse, widow, or widower under this subsection
15 commences on the day after the annuitant dies. This annuity and the
16 right thereto terminate on the last day of the month before the surviving
17 spouse, widow, or widower --

18 "(A) dies; or

19 "(B) remarries before becoming 60 years of age."

20 Section 3. . Section 221(f) of the Central Intelligence Agency
21 Retirement Act (50 U.S.C. 403 note) is amended --

1 (a) by inserting "(1)" immediately after "(f)"; and
2 (b) by adding at the end thereof the following new paragraph:
3 "(2) A participant, who is unmarried at the time of retiring
4 and who later marries, may irrevocably elect, in a signed writing
5 received by the Director within 1 year after the marriage, a reduced
6 annuity as provided in section 221(b). The reduced annuity is
7 effective the first day of the month after the election is received by
8 the Director. The election voids prospectively any election previously
9 made under the provisions of paragraph (1) of this subsection."

10 Section 4. Section 232(b) of the Central Intelligence Agency
11 Retirement Act (50 U.S.C. 403 note) is amended --

12 (a) by striking "dependent" wherever it occurs; and
13 (b) by inserting a "." after "section 221(g)" and striking the
14 remainder of the section.

15 Section 5. Section 251 of the Central Intelligence Agency
16 Retirement Act (50 U.S.C. 403 note) is amended --

17 (a) by striking "the Federal Employees' Compensation Act of
18 September 7, 1916, as Amended (5 U.S.C. 751 et seq.)" and
19 inserting in lieu thereof "chapter 81 of title 5, United States
20 Code or any earlier statute on which such chapter is based"; and

1 (b) by adding at the end thereof the following new sentence:
2 "A participant or former participant who returns to government
3 duty after a period of separation shall have included in his period
4 of service that part of the period of separation in which he was
5 receiving benefits under chapter 81 of title 5, United States
6 Code or any earlier statute on which such chapter is based."

7 Section 6. (a) The amendments made by sections 1, 2, and
8 4 shall not apply in the case of participants who died before
9 January 8, 1971, and the rights of such persons and their survivors
10 shall continue in the same manner and to the same extent as if
11 such amendments had not been enacted.

12 (b) The amendment made by section 3 shall apply to a
13 participant who was unmarried at the time of retiring, but who
14 later married, only if the election is made within one year after
15 enactment.

16 (c) The amendment made by section 5 is effective only with
17 respect to annuity accruing for full months beginning after
18 January 8, 1971; but any part of a period of separation referred
19 to in such amendment in which the participant or former participant
20 was receiving benefits under chapter 81 of title 5, United States
21 Code, or any earlier statute on which such chapter is based shall

1 be counted whether the person returns to duty before, on, or
2 after such date of enactment. With respect to any person retired
3 before such date of enactment, any such part of a period of
4 separation shall be counted only upon application of the retired
5 person.

SECTIONAL ANALYSIS

Section 1 removes dependency requirements from the definition of the term "widower". This means that, with respect to survivor benefits, widowers of female participants or retirees will be accorded the same treatment as widows of deceased male participants or retirees. Retained in the definition is the requirement that a widower be married at least two years immediately preceding the death of the retiree or participant, or be a parent of a child born of the marriage -- the same conditions that apply to a "widow".

Section 2 does four things:

--First, it amends the current provision for annuity for surviving spouse to whom the retiree is married at the time of retirement by authorizing payment of that annuity to a subsequent spouse. The spouse acquired after retirement must qualify as a widow or widower as those terms are defined in Section 204 of the Act as amended by section 1 of the bill.

--Second, it authorizes a survivor annuity for a widow or widower of a retiree who was unmarried at the time of retirement, subject to the election of a reduced annuity for this purpose by the retiree pursuant to section 3 of the bill.

--Third, it requires the surviving spouse, widow or widower, to elect between the benefits afforded under section 2 of the bill and any other entitlements to survivor benefits from a retirement system for Government employees.

--Finally, it provides for the commencement and termination date for the survivor annuities provided under section 2 of the bill.

Section 3 provides a retiree who is unmarried at the time of retirement with an irrevocable election to select a reduced annuity and provide, under section 2 of the bill, survivorship protection for a spouse acquired after retirement. The election must be received within one year after the marriage, and voids any election made at the time of retirement for a survivor annuity for an individual with an insurable

interest as authorized under current law (Section 221 of the Act). The retiree's annuity is paid at the reduced rate starting with the first day of the month following receipt of the election.

Section 4 changes the "Death in Service" provisions of the Act (Section 232) to remove the dependency requirements currently attached to the payment of a survivor annuity to a widower of a female participant who dies in service. The changes are compatible with the changes made in the definition of the term "widower" under section 1 of the bill.

Section 5 updates the citation in section 251 of the Act. Section 5 also provides retirement service credit for periods of separation from Federal government employment covered by employees' compensation for work injuries under 5 U.S.C. 81.

Section 6 provides effective dates in phase with those established for the Civil Service retirement system in connection with identical changes. These dates assure that the treatment afforded surviving spouses under the CIA Retirement Act will not be different than that afforded surviving spouses under the Civil Service retirement system.

CHANGES IN EXISTING LAW

Changes in existing law made by the draft bill are shown as follows: existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in brackets; new matter is underscored.

Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended (78 Stat. 1043; 50 U.S.C. 403 note).

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TITLE II -- THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Part A -- Establishment of System Rules and Regulations

* * * *

Annuitants

SEC. 204. (a) Annuitants shall be participants who are receiving annuities from the fund and all persons, including surviving wives and husbands, widows, [[dependent]] widowers, children, and beneficiaries of participants or annuitants who shall become entitled to receive annuities in accordance with the provisions of this Act.

(b) When used in this Act the term --

* * * *

(2) "Widower" [["Dependent widower"]] means the surviving husband of a participant who was married to such participant for at least two years immediately preceding her death or is the father of issue by marriage to the participant. [[, and who is incapable of self-support by reason of mental or physical disability, and who received more than one-half of his support from such participant.]]

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Part C -- Computation of Annuities

SEC. 221.

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(b) (1) If a participant who is married at the time of retirement dies the surviving spouse to whom the participant was married at the time of retirement, or the widow or widower to whom the participant was married after retirement, is entitled to an annuity equal to 55 percent of the amount of the participant's annuity computed as prescribed in paragraph (a) of this section, up to the full amount of such annuity specified by the participant as the base for such survivor benefits at the time of retirement. The annuity of the participant shall be reduced by 2 1/2 per centum of any amount up to \$3600 specified as the base for such survivor benefit by the participant plus 10 per centum of any amount over \$3600 so specified.

(2) If an annuitant dies after having elected a reduced annuity provided in paragraph (2) of section 221(f) the surviving widow or widower is entitled to an annuity computed as prescribed in paragraph (1) of this subsection.

(3) A spouse acquired after retirement is entitled to a survivor annuity under this subsection only upon electing this annuity instead of any other survivor benefit to which he may be entitled under this or another retirement system for Government employees. The annuity of the surviving spouse, widow, or widower under this subsection commences on the day after the annuitant dies. This annuity and the right thereto terminate on the last day of the month before the surviving spouse, widow, or widower--

(A) dies; or

(B) remarries before becoming 60 years of age.

[(b) At the time of retirement, any married participant may elect to receive a reduced annuity and to provide for an annuity payable to his wife, or her husband, commencing on the date following such participant's death and terminating upon the death or upon remarriage prior to attaining age sixty of such surviving wife or husband. The annuity payable to the surviving wife or husband after such participant's death shall be 55 per centum of the amount of the participant's annuity computed as prescribed in paragraph (a) of this section, up to the full amount of such annuity specified by him as the base for the survivor benefits. The annuity of the participant making such election shall be reduced by 2 1/2 per centum of any amount up to \$3,600 he specified as the base for the survivor benefit plus 10 per centum of any amount over \$3,600 so specified.]

* * * *

(f) (1) Any unmarried participant retiring under the provisions of this Act and found by the Director to be in good health may at the time of retirement elect a reduced annuity, in lieu of the annuity as hereinbefore provided, and designate in writing a person having an insurable interest (as that term is used in section 9 (h) of the Civil Service Retirement Act (5 U. S. C. 2259 (h))) in the participant to receive an annuity after the participant's death. The annuity payable to the participant making such election shall be reduced by 10 per centum of an annuity computed as provided in paragraph (a) of this section, and by 5 per centum of an annuity so computed for each full five years the person designated is younger than the participant, but such total reduction shall not exceed 40 per centum. The annuity of a survivor designated under this paragraph shall be 55 per centum of the reduced annuity computed as prescribed above. [The annuity payable to a beneficiary under the provisions of this paragraph shall begin on the first day of the next month after the participant dies. Upon the death of the surviving beneficiary all payments shall cease and no further annuity payments authorized under this paragraph shall be due or payable.]

(2) A participant, who is unmarried at the time of retiring and who later marries, may irrevocably elect, in a signed writing received by the Director within 1 year after the marriage, a reduced annuity as provided in section 221(b). The reduced annuity is effective the first day of the month after the election is received by the Director. The election voids prospectively any election previously made under the provisions of paragraph (1) of this subsection.

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DEATH IN SERVICE

SEC. 232

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(b) If a participant, who has at least eighteen months of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with the provisions of section 251 or 252(a) (2), dies before separation or retirement from the Agency and is survived by a widow or a [dependent] widower, as defined in section 204, such widow or [dependent] widower shall be entitled to an annuity equal to 55 per centum of the annuity computed in accordance with the provisions of section 221(a), except that the computation of the annuity of the participant under such section shall be at least the smaller of (i) 40 per centum of the participant's average basic salary, or (ii) the sum obtained under such section after increasing the participant's service of the type last performed by the difference between his age at the time

of death and age sixty. The annuity of such widow or [[dependent]] widower shall commence on the date following death of the participant and shall terminate upon death or upon remarriage prior to attaining age sixty of the widow or [[dependent]] widower (subject to the payment and restoration provisions of section 221(g)). [[, or upon the dependent widower's becoming capable of self-support.]]

* * * * *

COMPUTATION OF LENGTH IN SERVICE

SEC. 251. For the purposes of this Act, the period of service of a participant shall be computed from the date he becomes a participant under the provisions of this Act, but all periods of separation from the Agency and so much of any leaves of absence without pay as may exceed six months in the aggregate in any calendar year shall be excluded, except leaves of absence while receiving benefits under [[the Federal Employees' Compensation Act of September 7, 1916, as amended (5 U.S.C. 751 et seq.)]] chapter 81 of title 5, United States Code or any earlier statute on which such chapter is based, and leaves of absence granted participants while performing active and honorable military or naval service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States. A participant or former participant who returns to government duty after a period of separation shall have included in his period of service that part of the period of separation in which he was receiving benefits under chapter 81 of title 5, United States Code or any earlier statute on which such chapter is based.